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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 PROVIDENT FUNDING
13 ASSOCIATES, L.P.,

14 Plaintiff,

15 v.

16 LYDIAN PRIVATE BANK,
17 VIRTUALBANK, A DIVISION OF
18 LYDIAN PRIVATE BANK, and Does
19 1 through 20,

20 Defendants.

Case No.: CV-11-1538 JCS

**STIPULATION AND ORDER
DISMISSING ACTION**

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1 On August 19, 2011, the Office of the Comptroller of the Currency closed
2 Defendant Lydian Private Bank (“Lydian”) and appointed the FDIC as Receiver
3 pursuant to 12 U.S.C. §§ 1464(d)(2) and 1821(c)(5). On September 14, 2011, the
4 FDIC, as Receiver, was substituted for Lydian in this action. (ECF No. 28.)

5 Pursuant to the Financial Institutions Reform, Recovery and Enforcement Act
6 of 1989 (“FIRREA”), Plaintiff was required to exhaust the FIRREA administrative
7 claims process before continuing this action against the FDIC as Receiver. On
8 November 17, 2011 Plaintiff filed a Proof of Claim (the “Claim”) with the FDIC as
9 Receiver. On August 3, 2012 the FDIC as Receiver gave notice to Plaintiff that the
10 Claim had been allowed in part. Based on such allowance, Plaintiff is willing to
11 dismiss this action.

12 IT IS HEREBY STIPULATED AND AGREED by and between the parties
13 hereto through their respective counsel that this action be dismissed with prejudice,
14 with each party bearing its own attorney’s fees and costs. However, such dismissal

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1 shall have no effect on the partial allowance of Plaintiff's Claim by the FDIC, as
2 Receiver of Lydian Private Bank, dated August 3, 2012.

3 Dated: November 28, 2012

HOGAN LOVELLS US LLP

4 By: /s/ Neil R. O'Hanlon

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11 Dated: November 28, 2012

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24 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

25 Dated: _____, 2012

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HON. JOSEPH C. SPERO